

CUSTOMER NO. 28752

REMARKS

The Official Action has been carefully considered, and the Examiner's comments are duly noted. Reconsideration of this Application in light of the amendments for the specification and claims is respectfully solicited.

Claims 22-23 and 26-27 were rejected under 35 U.S.C. 102(e) as being anticipated by Nakamura (U.S. 6,241,900) and by Japanese Patent 46-40989.

Claim 22 was amended to set forth that the pair of spaced rollers are each axially oriented in the same direction. Roller 3b and roller 3a are orthogonally oriented relative to each other.

Claim 26 also calls for an endless belt and the belt in Nakamura is coiled at roller 3b.

The dependent claims also add additional features which are not shown, nor suggested by the prior art cited.

With respect to the present claims, it is not understood why the Examiner has indicated that claims 24 and 25 have been withdrawn, and it is believed that these claims should be in the present Application as they are directed to the method. Accordingly, claims 10 to 21 were withdrawn. It is not believed necessary to indicate that claims 1 to 9 were previously withdrawn, but if considered necessary, they can be so indicated by Examiner's amendment.

Turning now more specifically to the Official Action, and the election of Group II claims and Species I, Applicant is restricting this Application to the method claims. The original restriction requirement included claims 22-28 in Group II. It is further noted that

CUSTOMER NO. 28752

method claims 24 and 25 should be included as part of Group II. The apparatus claims 10-21 have been withdrawn from consideration.

Turning now to page 3 of the Official Action and the Examiner's comments about the specification, the portion of the specification to which the Examiner objects has been amended to refer to the revived PCT Application which is now proceeding as Serial No. 10/204,365 filed April 24, 2003. With respect to Application Serial No. 09/496,982 filed February 2, 2000, which omits part of the disclosure in the 10/204,365 Application, no decision has been made as yet by the Applicant as to the disposition of this Application. In any event, the present Application is being allowed to proceed without a claim to priority of the PCT Application, and if such priority is required, it will be claimed in due course before issuance of this patent.

At this point, it should be noted that no terminal disclaimer is being submitted with respect to the newly amended claims, because the claims in the 10/204,365 Application have not been finalized.

Nevertheless, a reference to the Serial No. 10/204, 365 has been added by amendment to the specification, and this is submitted as being a full reply to the sentence and observation by the Examiner "... that Applicant makes no reference to his claims with respect to his PCT Application"

The next point to be discussed is the Examiner's comments under "Priority." The case cited by the Examiner Transco Products, Inc. v. Performance Contracting, Inc., 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994) has been considered and if it is the Examiner's opinion that the data concerning "Cependency between the current application and the prior application..." applies to the present situation, then no terminal

CUSTOMER NO. 28752

disclaimer is required. However, the copendency relationship usually applies to a relationship between an earlier filed application and a later filed application.

In the present situation, while the 10/204,365 has an official filing date subsequent to the filing date of this Application, the 10/204,365 application is entitled to the filing date under the PCT and priority from its first filing in Australia. Therefore, all that is required is the submission of a priority claim in this application.

For the sake of the record, the Transco case is basically concerned with the submission and disclosure of best mode, and the requirement for the best mode to be updated when a continuation (or continuation-in-part) is filed, and the interplay of Section 120 and Section 112. Clearly the case went back to the District Court because of a failure to update the best mode. No updating of the best mode is required in the present situation.

Claim 22 was amended to set forth that the pair of spaced rollers are each axially oriented in the same direction. Roller 3b and roller 3a are orthogonally oriented relative to each other. Also, claim 22 was amended to indicate that the belt is folded and not just turned over or to start with a pocket.

Claim 26 also calls for an endless belt and the belt in Nakamura is coiled at roller 3b.

The dependent claims also add additional features which are not shown, nor suggested by the prior art cited.

Turning now more specifically to the claims rejection and to Japanese Patent No. 46-40989, the claims 22 to 28 also all distinguish from this disclosure patentably and are

CUSTOMER NO. 28752

allowable. Claims 22-23 and 26-27 were rejected under 35 U.S.C. 102(e) as being anticipated by Nakamura (U.S. 6,241,900) and by Japanese Patent 46-40989.

With respect to the Japanese Patent 46-40989 as best understood from the meager disclosure, the belt starts with a folded belt and ends with a folded belt which is provided with a pocket 5. The supply roller 6 supplies the folded belt with a pocket 5.

The claims as amended set forth a belt that starts unfolded and then is folded so that the portions forming the obverse side are folded to face each other, and the side forming the reverse side forms the two outer sides. Claim 22 was amended in detail to set forth that the two sides start from two parallel planar positions and then one side forms a pair of inner sides and the other side forms a pair of outer sides.

With respect to U.S. Patent 6,241,900 which was cited under 102(e) because it has a filing date of May 6, 1999, which is earlier than the filing date of this Application of April 23, 2001. Since this Application in all probability is entitled to the PCT filing date, this would not be a valid reference. Nevertheless, it is submitted that claim 22 originally, as well as amended, distinguishes from Nakamura '900.

The Examiner may be considering the spaced rollers to be 3a, 9a, 9b, 9c, and 9d. But the spaced rollers of interest are 3b and any one of the aforesaid rollers. Note, claim 22 now calls for a first and a second pair of spaced rollers. Considering Fig. 6, the rollers 18 may be considered to be a pair of rollers; however, rollers 16a/16b; 17a/17b are not a pair of spaced rollers.

Note, rollers 3a and 3b are not oriented in the same direction, and further, the belt or permeable sheet 3 is not unfolded.

CUSTOMER NO. 28752

With respect to claim 26, this claim sets forth three stations, and while the '900 patent may be considered to have three stations, no unfolding of the belt takes place between the second and third stations. The amendments effected to claim 26 are merely editorial changes and a portion from former claim 27 has been added to take care of adding a feature to the claim 26 which was not added to distinguish from the prior art but to add what the Examiner considers to be "essential elements."

It is noted that this is a Final Action, and the Examiner has been authorized to charge a two-months extension fee (small entity) in the amount of \$210.00 to our Deposit Account No. 10-0100. and if there are any further points outstanding, the Examiner is respectfully asked to call Applicant's attorney to do what is necessary to place this Application into condition for allowance.


Since this Application and Application Serial No. 10/204,365 are so closely related, the Examiner is respectfully asked to hold this Application in abeyance until the matter in Serial No. 10/204,365 is resolved.

Early and favorable reconsideration is respectfully solicited.

Respectfully submitted,

LACKENBACH SIEGEL, LLP
Attorneys for Applicant(s)

By:


Harold Nissen
Reg. No. 17283
Customer No. 28752
Telephone: (914) 723-4300
Fax: (914) 723-4301

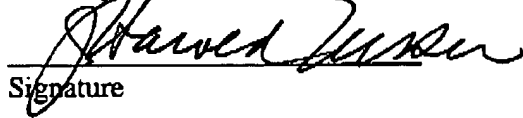
CUSTOMER NO. 28752

Certificate of Deposit by Mail

I hereby certify that this correspondence is being faxed to the United States Patent and Trademark Office at (703) 782-9306 by on the following date:

J. Harold Nissen

Attorney



Signature

February 25, 2004

Date

Applicant hereby petitions that any and all extensions of time of the term necessary to render this response timely be granted. COSTS FOR SUCH EXTENSION(S) AND/OR ANY OTHER FEE DUE WITH THIS FEE DUE WITH THIS APER THAT ARE NOT FULLY COVERED BY AN ENCLOSED CHECK MAY BE CHARGED TO DEPOSIT ACCOUNT #10-0100.